

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATION BOARD
REGION 9

PETSMART, INC

Employer

and

Case 9-RC-17880

UNITED FOOD AND COMMERCIAL WORKERS
UNION LOCAL 1059, AFL-CIO

Petitioner

ACTING REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION

The Employer, headquartered in Phoenix, Arizona, is engaged in the operation of more than 500 retail stores and eight distribution centers throughout the United States, selling pet food and a variety of pet products to the general public. The Employer operates two distribution centers in the greater Columbus, Ohio area at Groveport and Gahanna, Ohio. These two distribution centers are the only facilities at issue in this proceeding.

The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent approximately 400 employees in a unit comprised of all full-time and regular part-time warehouse employees, including shipping and receiving employees, maintenance employees, and plant clerical employees employed at the Employer's Groveport, Ohio distribution center, excluding all employees employed by temporary agencies, all seasonal employees, truck drivers, office clerical employees and all professional employees, guards, and supervisors as defined in the Act. Contrary to the Petitioner, the Employer contends that only a multi-location unit that includes the employees at both the Groveport, Ohio and Gahanna, Ohio facilities is appropriate. The parties have stipulated that there is no history of collective bargaining affecting the employees involved in this proceeding. No other labor organization is seeking to represent the employees at either the Groveport and/or the Gahanna facilities.

A hearing officer of the Board held a hearing on the issues raised by the petition and the Employer and the Petitioner filed briefs with me. It appears from the record and the briefs of the parties that the only issue before me is whether a unit limited to the Groveport facility is an appropriate unit. I note that the Petitioner has stated a willingness to proceed to an election in any unit found appropriate.

I have carefully considered the evidence and the arguments presented by the parties on the issues. As discussed in detail below, I conclude that the employees sought by the Petitioner

constitute an appropriate bargaining unit. In reaching this conclusion, I find that the Employer has not rebutted the Board's single facility presumption. Central to this conclusion is the fact that each facility has its own general manager, assistant general manager and human resource manager who make the decisions concerning the daily operations and labor relations at the facility, including hiring, firing, discipline and employee evaluations. In addition, there is no evidence of consistent meaningful interchange of employees between the two facilities. Finally, using the factors the Board considers when determining unit scope, the evidence failed to establish that the two facilities are so integrated that they have lost their separate identity. Accordingly, I have directed an election in a unit of all full-time and regular part-time warehouse employees, including shipping and receiving employees, maintenance employees, and plant clerical employees employed at the Employer's Groveport, Ohio distribution center.

To provide a context for my discussion of the issue, I will first provide an overview of the Employer's operations. I will then present, in detail, the facts and reasoning that supports my conclusions on the issue.

I. OVERVIEW OF OPERATIONS

A. Background information on the Employer's Operations:

The distribution centers at issue in this proceeding store and ship pet products and supplies to the Employer's retail stores. The eight distribution centers operated by the Employer nationwide are divided into two discrete categories called forward distribution centers (FDC) and distribution centers (DC). There are six forward distribution centers: Reno, Nevada (FDC 21), Phoenix, Arizona (FDC 12), Atlanta, Georgia (FDC 20), Hagerstown, Maryland (FDC 18), Gahanna, Ohio (FDC 16), Newnan, Georgia and Ennis, Texas (FDC 14). Phoenix, Arizona (DC 12) and Groveport, Ohio (DC 10) are the only facilities classified as "distribution centers."

All six of the forward distribution centers, including Gahanna, confine their operations to processing 1500 of the heavy selling "fast moving products" such as dog or cat food and big bulky items that clear the shelves at the Employer's retail stores on a regular basis. Gahanna, as a forward distribution center, makes deliveries to the retail stores it services twice a week. On the other hand, Groveport, as a distribution center, processes 8,000-9,000 of the "slower moving products" such as pet toys and other non-perishable items. Shipments from the distribution center in Groveport to the retail stores are made only once a week. The Groveport facility, which is approximately 600,000 square feet in size, is more than twice as large as the Gahanna facility, which is approximately 275,000 square feet in size.

The Employer employs approximately 400 full-time permanent employees at its Groveport facility and approximately 110 full-time permanent employees at its Gahanna facility. Both facilities utilize temporary employees on a regular basis, typically during the fourth quarter when there is an increase in sales volume. Currently it appears that Groveport has about 70 to 90 temporary employees; the record does not reflect how many temporary employees are currently working at Gahanna. Neither party contends that the temporary employees should be part of the proposed bargaining unit.

The facilities at issue in this proceeding are basically a combination of a distribution center and a warehouse. The Groveport and Gahanna facilities, as well as all of the Employer's other distribution centers, operate under very similar procedures and practices with regard to storing and shipping pet products. Trucks, driven by employees of an outside trucking company,^{1/} deliver products to the warehouses. Unit employees at the Groveport facility, referred to in the record as distribution center associates,^{2/} unload the trucks, scan the items being delivered and label them for storage in the facility. This process is done through the warehouse management program, EXE, used at Groveport, as well as at Gahanna and throughout all of the Employer's distribution centers. Next, the associates store the product designated by the EXE system in the "picking" location. The distribution center associate responsible for filling a retail store's order is able to find where each product is located in the warehouse through the use of a portable scanner. The record reflects that because Groveport and Gahanna use identical systems to store and ship products, an employee at either facility would easily be able to understand and work within the other facility without any additional instruction or assistance.

Prior to the year 2000, the Gahanna facility was the sole distribution center of the Employer's products, both slow and fast moving, in the Columbus vicinity. At that time, the Employer concluded that it was outgrowing the 275,000 square foot building in Gahanna and decided to build a second facility that would make up the additional needed space. The Groveport facility was constructed in 2000, giving the Employer an additional 600,000 square feet of warehouse. After Groveport was completed, the entire operation at Gahanna, including almost all of its 300 employees, was transferred to the new Groveport building and the business continued to function at that site. For a 2-3 month time period, employees only worked out of Groveport while Gahanna was being remodeled and reconfigured. After the construction work at Gahanna was complete, the record indicates that approximately 67 employees transferred from Groveport back to their original facility in Gahanna which functioned only as a forward distribution center processing fast moving products. Groveport continued to operate only as a distribution center, distributing slow moving products.^{3/}

B. Control Over Daily Operations and Labor Relations:

All administrative decisions, with respect to personnel policies, procedures, benefits, compensation, and administration for all distribution centers, including Groveport and Gahanna, emanate from the Employer's corporate Headquarters offices in Phoenix, Arizona. This includes decisions on benefits such as employee health insurance, 401(k) plan, holidays, personal leave, sick leave, flexible spending accounts, stock purchase plan, employee assistance plan and

^{1/} Cardinal Transportation is the transportation provider/contract carrier which supplies dedicated trucks and drivers to the Employer at its Groveport and Gahanna facilities. There is no contention that the Employer and Cardinal are joint employers or that the truck drivers should be included in any unit found appropriate.

^{2/} Distribution center associates are also divided into specific job functions: receiving clerks, unloaders, scanners, replenishment operators, put-away drivers, rack pickers, break pickers, equipment operators, shoppers, orderfill clerks, and maintenance associates. These classifications are not discussed in detail in the record.

^{3/} This same configuration, a dual approach to distribution, is also being used in Phoenix, Arizona.

purchase discount program, vision plan, and seniority program.^{4/} The record reflects that personnel files are maintained at the local distribution centers and at Headquarters with Headquarters receiving copies of employee discipline once it has been issued. The Employer has uniform personnel policies throughout its national operations that are specified in a handbook given to all distribution center associates. In addition, all inventory, advertising, purchasing and related business decisions are dictated through Headquarters. Likewise, Headquarters determines the hours of operation and sales procedures.

All financial aspects of the Groveport and Gahanna operations are controlled from Phoenix, including the rates of pay for all associates, which is dictated by a market analysis done by Headquarters. The starting pay rate and wage scale is identical for Groveport and Gahanna and all associates are paid on the same day by their respective facility. Certain vendors used by the Gahanna and Groveport facilities are also dispatched from Headquarters. For example, the record discloses that if the HVAC system at the facility were to need repair, Headquarters would obtain and send a vendor to perform the maintenance. In addition, the record reflects that Groveport and Gahanna also share similar vendors, not necessarily chosen by Headquarters, such as the temporary employment agency, Ameri Temps, Columbus Paper Company, canteen service for the break rooms, and companies used by the Employer for the repair of equipment at the two facilities.

Although the Employer's headquarters appears well staffed with between 800-1000 employees entitled "store support group" or SSG, the record only specifies a small portion of the management structure in Phoenix. The record reflects that David Quinn, whose office is located at Headquarters, is the Employer's senior Vice-President of Distribution. Directly under Quinn are the Directors of Distribution on the east and west coasts. Shawn Mahoney is the Director of East Coast Distribution and is based out of Columbus, Ohio. Mahoney is responsible for four distribution centers on the east coast: the two Columbus area centers at issue and the forward distribution centers in Hagerstown, Maryland and Newnan, Georgia. Mahoney has an office at each distribution center. He regularly visits the Columbus sites on a weekly basis, while visiting the other two stores about once a quarter. Each distribution center has its own general manager, who reports directly to Mahoney. Lance Hunt was just recently hired as the general manager in Groveport and Wynona Anderson holds that position at the Gahanna facility.

With respect to the rest of the management staff at the two facilities, Groveport has an Assistant General Manager, Debbie Raynes, and a People Manager,^{5/} Kate Thiergart, who report directly to Hunt. In addition, there are first and second shift Receiving Managers, Orderfill Managers and Shipping Managers, a Weekend Manager and a Traffic Manager that report to Raynes. The record does not reflect whether there is an Assistant General Manager at the Gahanna location but it does reflect that an Operations Manager reports directly to General Manager Anderson along with People Manager, Greg Best. Gahanna has a similar structure of shift managers as Groveport and both facilities have numerous department supervisors who

^{4/} Some benefits may be limited in geographical scope depending on the provider, e.g. medical insurance.

^{5/} This position title was recently changed from Human Resource Manager to People Manager.

report directly to the manager of their respective departments as well as additional human resource staff under the respective People managers, Thiergart and Best.

Associates at Groveport and Gahanna receive individual evaluations of their performance and are eligible for a merit raise every 6 months. The form that is used to determine the amount of the raise is developed at Headquarters but no one at Headquarters has any input into the content of the evaluation or the amount of a pay increase an associate might receive. The evaluation for each associate is completed at the distribution center level by a department supervisor or manager. The supervisors at each facility fill out the 6-month evaluations and, generally, discuss the evaluations with each associate. Only the individual facility is involved in the evaluation of associates and the decision pertaining to any resulting pay raise. With regard to other personnel matters, the record reflects that the local management at each facility has daily control over any issues that arise at their respective facility.

In hiring matters, local management at the Groveport and Gahanna facilities typically hire their permanent associates from a pool of temporary workers obtained from an employment agency who are working at their respective facilities. Neither the local distribution centers nor Headquarters advertise to hire permanent employees; associates are hired from the pool of temporary employees already at the facility. The two facilities do not share temporary employees or the applications of any employee applicants. The Employer's Headquarters coordinates job advertisements for supervisors or managers and have shared resumes for such positions among the facilities. It appears that Mahoney is directly involved in the hiring of managers but not rank-and-file employees. Moreover, the hiring of unit employees is not coordinated.

Usually after about 6 weeks, if local management at Groveport or Gahanna determines that a temporary associate has succeeded at his or her work assignment and has been a "good" employee, permanent employment is offered to the temporary employee by a supervisor at the particular distribution center. The Employer's Headquarters does not have any direct role in the hiring of these employees. After the temporary worker is offered employment, he or she fills out an employment application. A copy of this application is sent to Headquarters, where Headquarters coordinates a drug test and a background check is completed. Only if the applicant fails the drug test, or if something detrimental is found in the background check, does Headquarters direct the facility's staff to not hire an individual.

Similarly, human resource departments at Groveport and Gahanna initiate all firing and disciplinary decisions for their respective facilities. If an employee is merely disciplined, management at the respective distribution center will send Headquarters a written record so that it may stay in that employee's file. The form that is used for such discipline is produced by Headquarters and used by every distribution center. If an employee's actions are found to warrant termination, human resources at the respective distribution center will communicate the problem to Headquarters for their approval. The record reflects that only once out of nearly 30 occasions has Headquarters denied a distribution center manager's request to terminate an employee.

C. Functional Integration of Operations:

As noted above, the majority of the operational policies and procedures at the distribution center are mandated by Headquarters. Beyond those similarities, the record only indicates occasional integration of operations between Groveport and Gahanna. For example, Groveport and Gahanna regularly borrow supplies from each other such as packing wrap, shipping labels, pallets, certain parts for equipment or extra personnel forms such as handbooks or new hire kits, both developed by Headquarters. Recently, both distribution centers signed a joint contract with IKON, a copying service, to fulfill their copying needs. Prior to this each distribution center had separate contracts for similar service.

Another example of integration of operations between Groveport and Gahanna evidenced in the record is when a shipment to a retail store is co-mingled with products from both facilities. In this connection, when products from Groveport cannot fit on the truck going out on its weekly delivery, the extra product is moved over to Gahanna and put on one of their trucks for shipment. To facilitate product movement, usually the shipping or transportation managers from the respective distribution centers contact each other weekly or daily and discuss the need to fill trucks and then communicate the product assignment to the carrier service. Associates of the two Columbus facilities do not communicate with each other concerning distribution operations and there is no evidence that they have ever had the need to do so.

There is evidence in the record concerning other interaction between the various managers and supervisors at Groveport and Gahanna. For example, the general managers at Groveport and Gahanna, along with Mahoney and Quinn participate in conference calls on a weekly basis with other distribution centers. In addition, the record shows that the Employer conducts joint management training involving supervisors and managers from all of its distribution centers.

D. Employee Skills, Functions, and Working Conditions:

The Groveport and Gahanna associates share almost identical skills, functions, and working conditions, with the exception of the critical fact that they work in separate facilities that are vastly different in size and distribute completely different products. Both groups of employees perform the same functions and both groups enjoy similar working conditions, including compensation, hours, breaks, and benefits. The only difference in pay or benefits received by the distribution center associates in Groveport and Gahanna is an attendance bonus which is given to only the Groveport associates. The employees in Groveport and Gahanna, based on the Employer's area wage survey, have the same wage scale which is different from the employee wage structures at the Employer's other distribution centers. However, the Groveport and Gahanna associates share the same benefits as determined by Headquarters with the associates at the other distribution centers.

All new associates receive comparable training. However, they are trained separately at each of their respective distribution centers. Essentially, the training consists of an associate being "walked" through the policy manual during the new hire orientation, given a new hire packet, and shown a safety video that was produced by Headquarters. Once permanently hired,

the associate at every distribution center works under similar employment conditions as set out by the employee handbook produced at Headquarters.

E. Employee Interchange/Contact:

As discussed above, the most significant employee interchange between Gahanna and Groveport occurred in 2000 after Groveport was built and Gahanna was being remodeled. The record does not indicate how many employees are still working at either facility who were part of the 67 employees that originally transferred back to Gahanna. Except for the transfers in 2000 when the two operations were established, the record discloses possibly nine permanent employee transfers^{6/} and only one of those occurred in the past year. The record reveals little about how or why these transfers occurred except for an Employer witness' conjecture that the transfers probably occurred because the employee had requested such transfer and it was therefore voluntary and not because the Employer had ordered such transfer. The record reflects that permanently transferred employees carry their Employer seniority with them to the other facility which is used to determine their rate of pay, next pay adjustment date, and the amount of available vacation time. With respect to job openings, the record reflects that such openings at one facility are not cross-posted at the other facility.

The record reflects that in November 2003, the employees at the Groveport facility were working a high number of overtime hours. To supplement the Groveport workforce, Gahanna employees were asked by Gahanna management if they wanted to volunteer to work at Groveport on the weekends. For three weekends in November, a total of 47 employees signed up to work overtime hours at Groveport. Interested employees would sign up to work the overtime and the General Manager at Gahanna would then send over a master list to Groveport so that they would know who to expect. For overtime calculation purposes, employees who volunteered to work at Groveport would have their hours combined with the hours they had already worked at Gahanna that same week. The Gahanna employees, however, were not able to clock in at Groveport like they normally would at their own facility because their "swipe" cards would not work at the Groveport facility due to the fact that they were not programmed into the Groveport system as an employee. Therefore, the managers at Groveport manually kept track of their hours and forwarded the information to the human resource administrative assistant at Gahanna so that it could be keyed into the Gahanna payroll system and eventually transmitted to Headquarters.

Except for the employee transfers or interchange discussed above, there is no other evidence that an employee or a group of employees has engaged in similar overtime work. The Employer asserts that because the facilities are now at full capacity, the situation that occurred in November 2003 regarding the overtime hours would become a more frequent occurrence. However, except for the speculation of the witnesses, no evidence was presented to support such claim.

^{6/} I base my finding on: Employer's Exhibit 18. The Employer argues in its brief that the number of permanent transfers since 2000 is "approximately seventeen (17)" while the Union argues it is only 12: 8 in 2001, 3 in 2002 and 1 in 2003. Both parties are compiling these numbers off the same Exhibit 18. I have determined that based on the exhibit, only nine separate employees, excluding supervisors, actually transferred from Groveport (DC 10) to Gahanna (FDC 16) or vice versa since 2000.

Although the record discloses that supervisors or managers of the two Columbus facilities regularly talk with each other regarding such matters as coordinating shipments, there is no evidence in the record of any daily contact between the distribution center associates at the two distribution centers. Except for the transfers and the working of overtime discussed above, there is little evidence of the employees at the two distribution centers having contact or interchange with each other.

F. Bargaining History and Distance Between Facilities:

The record reflects that there is no bargaining history at either distribution center. In addition, the two distribution centers are located in the greater Columbus area and are approximately 15 miles apart.

II. THE LAW AND ITS APPLICATION

The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or even the most appropriate unit; the Act requires only that the petitioned-for unit be appropriate. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, a union is not required to seek representation in the most comprehensive grouping of employees unless such grouping alone constitutes an appropriate unit. *Bamberger's Paramus*, 151 NLRB 748 (1965). Although not dispositive, a petitioner's unit desire is a relevant consideration. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). Moreover, it is well settled that there is often more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. *Overnite Transportation Co.*, 322 NLRB 723 (1996). More importantly, with respect to the issue here, the Board has long held that a single facility unit is presumptively appropriate, unless the employees at the facility have been merged into a more comprehensive unit by bargaining history, or the facility has been so integrated with the employees in another facility as to cause their single-facility unit to lose its separate identity. *Cargel, Inc.*, 336 NLRB No. 118 (2001); *New Britain Transportation Co.*, 330 NLRB 397 (1999). *Centurion Auto Transport*, 329 NLRB 34 (1999); *Kendall Co.*, 184 NLRB 847 (1970); *Kent Plastics Corp.*, 183 NLRB 612 (1970); *National Cash Register Co.*, 166 NLRB 173 (1967); *O'Brien Memorial*, 308 NLRB 553 (1992); and *Passavant Health Center*, 313 NLRB 1216 (1994) (health care institution). See *J&L Plate, Inc.*, 310 NLRB 429 (1993).

A number of factors bear on the unit determination in a multi-location situation. Such factors include: control over daily operations and labor relations; employee skills, functions and working conditions; employee interchange or contact; distance between facilities; and bargaining history. These and other factors must necessarily be weighed in resolving the unit contentions of the parties. See, for example, *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *Novato Disposal Services*, 328 NLRB 820 (1999) and *R&D Trucking, Inc.*, 327 NLRB 531 (1999), both finding that the single facility presumption was rebutted; *RB Associates*, 324 NLRB 874 (1997), single facility presumption not rebutted. See also, *J&L Plate*, supra.

With this in mind, it follows that substantial authority of local management (*Equitable Life Assurance Society*, 192 NLRB 544 (1971)), lack of substantial interchange or transfer of employees (*Rohm & Haas Co.*, 183 NLRB 147 (1970)), geographic separation of the plants

(*Capital Bakers*, 168 NLRB 904, 905 (1968)), the absence of any bargaining history on a broader basis (*Transcontinental Bus System*, 178 NLRB 712 (1969)), and the fact that no labor organization is seeking to represent a more comprehensive unit (*Welsh Co.*, 146 NLRB 713 (1964)) are factors customarily relied on for finding a single-plant unit appropriate. See also *Bowie Hall Trucking*, 290 NLRB 41 (1988); *Esco Corp.*, 298 NLRB 837 (1990); and *Executive Resources Associates*, 301 NLRB 400 (1991).

Even if there are some factors supporting a multi-location unit, the appropriateness of such a unit does not establish the inappropriateness of a smaller unit. *McCoy Co.*, 151 NLRB 383, 384 (1965); cf. *Montgomery Ward Co.*, 150 NLRB 598 (1965). Although the optimum unit for collective bargaining may well be citywide (i.e., larger) in scope, a union is not precluded from seeking a smaller unit when the unit sought is, in and of itself, also appropriate for collective bargaining when viewed in light of all the circumstances. *Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551 (1964). The scope of the unit sought by the Petitioner is also relevant but cannot be determinative of the unit. However, when a union seeks a presumptively appropriate unit (e.g., a single facility), it is the employer's burden to rebut the presumption. See *Greenhoren & O'Mara Inc.*, 326 NLRB 514 (1998).

In the case at hand, Board law establishes that the unit sought by the Petitioner is presumed to be appropriate unless the Employer carries its burden of rebutting the presumption. In order to rebut the presumption, the Employer must establish that factors bearing on the unit determination support such a rebuttal. It is not sufficient that the Employer merely establish that a multi-location unit of Groveport and Gahanna associates is the optimum or most appropriate unit. As noted above, I find that the Employer has failed to rebut the single facility presumption. An examination of the factors and circumstances present in this case supports my finding.

A. Control Over Daily Operations and Labor Relations:

With regard to control over daily operations and labor relations, it is clear from the record that the Employer's corporate offices, through Headquarters or its "store support group" in Phoenix, Arizona, control and impact significant aspects of the operations of its facilities nationwide by the implementation and enforcement of various policies and procedures dealing with the nature of employees' work and the conditions under which that work is performed. However, significant supervisory and administrative functions remain with the individual facilities' management, including disciplining and initiating the terminations of associates, conducting the initial screening and interviewing of prospective associates, effectively hiring specific associates, and evaluating the associates' respective job performances with resultant increases in pay for the associates. It is also significant that all the local training for new hires is done on-site by local management. Further, the record reflects that the General Managers for the respective distribution centers are responsible for the daily operations of their facility and all of the activities at their location. For example, each distribution center chooses its own vendors for certain functions.

Although the record reflects that the distribution centers use identical forms for hiring, disciplining and evaluating employees, only local management contributes to such decisions. I attach little weight on the fact that the distribution centers submit a copy of disciplinary forms to

Headquarters when disciplining employees or that Headquarters must provide a “termination number” when the local distribution centers find it necessary to take such action. The Employer could only recall one time out of at least 30 occasions that Headquarters determined to not discharge an employee after it was recommended by the local management. The Employer argues that discipline is “reviewed” by Headquarters, but such review appears only routine and has little to do with the final decision. Indeed, the record discloses that Headquarters only receives a copy of the discipline *after* it is already administered to the employee. See *New Britain Transportation Co.*, supra at 397, where the Board found a single unit appropriate even though the Employer had centralized control over personnel and labor relations policies, including not only accounting, recordkeeping, payroll, wages, and benefits as in the instant case, but also formal discipline, new-hire training, and safety training which are not found in the present circumstances.

The Employer argues in its brief that there is centralized or joint control over many aspects of the daily operations at Groveport and Gahanna distribution centers. The Employer cites, in support of this position, *Charette Drafting Supplies Corp.*, 275 NLRB 1294 (1985); *Trane*, 339 NLRB No. 106 (2003); and *Stormont-Vail Healthcare, Inc.*, 340 NLRB No. 143 (2003), where the Board found the Employer had rebutted the single facility presumption. However, these cases are distinguishable from this proceeding.

Although the Board in *Charette* found it important that the general manager had meetings with local management, the general manager in that case, unlike here, actually participated in hiring decisions, interviewed all the applicants at both stores and resolved employee grievances. In addition, the Board found it very significant that employees from each store had frequent telephone contact while performing their duties and all the items sold at either store were intermingled and shipped from one store to another, none of which occurs in the instant case. *Id.* at 1296.

In *Trane*, the Board held that the single facility presumption was rebutted given the fact that the employees at the main and an auxiliary location were directly supervised out of the main location where all management decisions were made for both facilities. In the absence of any local autonomy at the secondary site, and given the similarity in employee skills, job classifications and working conditions, and the contact between both employee groups, the Board found that a multi-location was the appropriate unit despite the geographic distance between the facilities and the lack of specific evidence of employee interchange. Contrary to the situation described in *Trane*, there is, in the instant case, a separate management structure at each distribution center which exercises significant local control over the day-to-day operations of the center, including decisions to hire, discipline and discharge distribution center associates and the training and evaluation of associates.

In *Stormont-Vail*, the Board reversed a Regional Director’s decision to separate a group of nurses at the hospital from nurses at an off-site clinic. The Employer argues that the Board found it significant that the employer in that case had a highly centralized operation. However, an examination of the Board’s decision discloses that the Board placed a high degree of importance on the contact and interchange between employees at the facilities, supervisory/managerial interchange between the facilities, the joint training exercises performed

by employees at both facilities, the fact that the employees at both facilities used the cafeteria and fitness center located at the main campus and that employees at both facilities attended common meetings, classes, and social events. None of these factors appear present in the instant case.

The Employer also cites the Board's decision in *R&D Trucking, Inc.*, supra, and argues that the centralized control over the daily operations of the Groveport and Gahanna distribution centers exercised by Headquarters is sufficient to make a single location unit inappropriate. However, in *R&D Trucking*, unlike here, there was evidence establishing a lack of local autonomy and substantial employee interchange, among other factors, to rebut the single facility presumption.

B. Employee Skills, Functions and Working Conditions:

With respect to the factor of employee skills, functions and working conditions, the distribution center associates at both distribution centers possess identical skills, perform identical functions, and work under nearly identical working conditions. However, the distribution centers handle discrete product categories. Groveport handles slow moving product with generally one delivery per week while Gahanna handles fast moving product with two deliveries per week. Groveport stocks considerably more product. Therefore, the employees do work under somewhat different conditions. The Employer argues that none of its other distribution centers has the same pay scale as the Groveport and Gahanna sites and therefore this supports a finding that their operations are substantially integrated. Although probative, I find this factor is not sufficient to establish that the Groveport and Gahanna operations are integrated. Rather, I find that the commonality of the pay scales for employees are more reflective of the Employer's attempt to make their pay rates compatible with the pay of other employees in their market.

C. Employee Interchange or Contact:

Regarding the factors of employee interchange or contact, the record reveals that there were approximately nine permanent employee transfers since 2000, only one of which occurred last year. There were about 67 transferred employees in the year 2000 that the Employer argues shows significant interchange between the two distribution centers. However, the record discloses that the transfers were precipitated by an extraordinary and distinct event, and does not, standing alone, demonstrate evidence of substantial employee interchange between the two distribution centers. Every employee left the Gahanna site for a short time and when they were transferred back, two diverse and distinct facilities began operations. The Employer relies heavily upon the transfer of employees in 2000 to support its argument. However, this one time occurrence is insufficient to rebut the presumption of a single store facility. See *J.W. Mays*, 147 NLRB 968, 970 (1964) where, except for a rare instance of a new store opening, employees were not transferred from the store in question to another store and a unit confined to one store was found appropriate.

Further, any contact between employees at the two distribution centers is relatively insignificant (i.e., three weekends during one month). Even when the Gahanna employees did

volunteer to work at Groveport in November 2003, the Employer had to manually record the hours worked by the volunteers because the clock-in system did not permit such interchange between sites. Moreover, as noted in *New Britain Transportation Co.*, supra at 397, little weight is given to *voluntary* interchange in determining if employees from different locations share a common identity. Such temporary, voluntary interchange in this matter with only one permanent transfer occurring in the last year, supports the single facility presumption. See also *J&L Plate*, supra, where the Board found that minimal employee interchange and lack of meaningful contact between employees at the two facilities diminished the significance of the functional integration and distance between the facilities. Although the Employer asserts that temporary transfers could be a more frequent occurrence, it provided no proof to substantiate that assertion.

The Employer relies upon *Coca-Cola Bottling Co.*, 325 NLRB 312 (1998) and *St. Luke Health System, Inc.*, 340 NLRB No. 139 (2003), where the Board found that the employers had rebutted the single facility presumption. However, these cases are distinguishable from the case at hand. Although the Board recognized in *Coca-Cola* that lack of employee interchange alone was not enough to categorically favor a separate unit, it also found important that neither facility at issue had a supervisor with the authority of a retail store or plant manager. As described above, the Groveport and Gahanna distribution centers each have a manager in place who has control over the daily operations of the distribution centers. In *St. Luke*, the employer operated several health care clinics. The Board found a unit limited to one clinic inappropriate. Although there was only a minimal amount of employee interchange at the site sought by the petitioner, other factors weighed heavily in the favor of rebutting the single facility presumption. These factors included the Board's finding that employee interchange did in fact exist in the form of nurses floating to the other facilities to provide additional assistance or to substitute for vacationing RNs; nurse practitioners and physician assistants temporarily aiding short-staffed clinics; school-based occupational health nurses filling in at other clinics during the summer months; and medical technologists and physical therapists frequently traveling to all of the clinics. In addition, the Board found that during the previous 2 years, 29 employees permanently transferred among the various clinics and that this was done with ease as job openings were posted at each clinic. This sort of interchange is much more noteworthy than any experienced between Groveport and Gahanna.

Likewise, the Employer's reliance on the Board's decision in *Globe Furniture Rentals, Inc.*, 298 NLRB 288 (1990) and *Tulane University*, 195 NLRB 329 (1972), is misplaced. In *Globe*, the Board found contrary to the Regional Director that the local store manager lacked substantial autonomy regarding labor relations and personnel policies and procedures. Specifically, the Board in that case found that the store managers, unlike the distribution center managers here, did not have the "unfettered" right to reject job applicants. Similarly, in *Tulane*, the Board found that the single facility presumption had been overcome because, inter alia, and unlike here, hiring and promotions were determined through a central office, employees were subject to centralized supervision and there was little autonomy in the separate facilities.

D. Bargaining History:

There is no bargaining history at either Groveport or Gahanna. The distance between the two distribution centers, 15 miles, is significant. Finally, no other labor organization seeks a more comprehensive unit.

E. Conclusion:

In order to rebut the presumptive appropriateness of a single location unit, it must be shown that the single facility lacks sufficient autonomy and that there is substantial interchange and contact between the employees of the various facilities. In *Bowie Hall Trucking*, 290 NLRB 41 (1988), the Board found that the presumption had not been rebutted where the local manager conducted initial screening for new hires and was consulted on disciplinary issues which was sufficient to establish local autonomy. The local manager also assigned routine work and there was minimal interchange between facilities. Similarly, in *Esco Corp.*, 298 NLRB 837 (1990), local autonomy was found where a “leadman” assigned routine duties, granted time off and scheduled vacations. There was also an absence of interchange between facilities. The Board found these factors to be sufficient to show that the presumption of a single facility unit was not rebutted. Finally, in *Rental Uniform Services, Inc.*, 330 NLRB 334 (1999), the Board held that the single facility presumption had not been rebutted because each location had its own manager and supervisors who initiated employee discipline, evaluated employee job performance and were involved in the hiring process at their particular facility and there was a lack of employee interchange among the facilities in question.

Although there is extensive centralized control over administrative and personnel policies and employee skills, functions and working conditions are essentially identical at the two distribution centers, I find that these and other factors militating in favor of a multi-location unit are outweighed by the existence of significant local managerial autonomy, a lack of significant employee interchange and contact, a lack of bargaining history for the employees at the distribution centers or a labor organization seeking bargaining in a more comprehensive unit, and by the distance between the facilities. Based on the foregoing and the record as a whole, the evidence fails to demonstrate that the Groveport facility has been so integrated with the operations at the Gahanna distribution center as to cause such facility to lose its separate identity. Indeed, the separate identity of the two facilities here appears much greater than for the two stores which the Board found could constitute separate units in *Renzetti’s Market, Inc.*, 238 NLRB 174 (1978). Accordingly, I find that the single facility unit sought by the Petitioner is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. *Rental Uniform Services, Inc.*, supra; *Renzetti’s Market, Inc.*, supra. Therefore, I shall direct an election in a unit limited to the Employer’s Groveport, Ohio distribution center.

III. EXCLUSIONS FROM THE UNIT

The parties agree, the record shows, and I find that the following persons are supervisors within the meaning of Section 2(11) of the Act: Lance Hunt, general manager; Debbie Raynes, assistant general manager; Kate Thiergart, people manager; Matt Stewart, receiving manager; Julie Curry, orderfill manager; Steve McCluskey, shipping manager, Kevin Goble, receiving manager; Joe Pinkerton, shipping manager; Steve Albrecht, weekend

manager; Scott Murgatroyd, traffic manager; Jason Pletcher, receiving supervisor; John Cornwell, receiving supervisor; Natalia Gleason, order fill supervisor; Angie Harris, order fill supervisor; Brandon Wymer, order fill supervisor; David Knee, shipping supervisor; Dave Mauger, shipping supervisor; Jimmy Weatherspoon, shipping supervisor; Kelly Kitsos, receiving supervisor; Matt Shimmel, receiving supervisor; Trent Corpron, order fill supervisor; Jerry Parish, order fill supervisor; Seyni Gueye, order fill supervisor; Nancy Roe, shipping supervisor; Rhonda Kline, people supervisor; Art Byall, system administrator supervisor; Dave Akers, facilities supervisor; Shelly Carroll, service supervisor, Trish Miller, service supervisor; Pat Toohey, service supervisor; Diana Hyme, service supervisor; Diane Davis, customer service supervisor; Jon Huizer, weekend receiving supervisor; and leads: Dale Featherstone, Meishawna King, Josh McIntosh, Danial Mafinga, Michael Gool.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the above discussion, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time distribution center associates, including shipping and receiving employees, maintenance employees, and plant clerical employees employed at the Employer's Groveport, Ohio distribution center, excluding all employees employed by temporary agencies, all seasonal employees, truck drivers, office clerical employees and all professional employees, guards, and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food and Commercial

Workers Union, Local 1059, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **March 30, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to

the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDST on **April 6, 2004**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 23rd day of March 2004.

/s/ Earl L. Ledford, Acting Regional Director

Earl L. Ledford, Acting Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

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